

*Some CONSIDERATIONS on the Times
wherein Marriage is said to be Prohibited:
In a LETTER from one Clergy-man
to another.*

S I R,

THERE having been a general Reprimand given to us at the last Visitation, because Many of us had Married Persons by Banns during such times as some say we are prohibited to Marry in; and being then told that we should find what times those were in *Lyndwood*, a Book which it was said, all Clergy-men ought to have, and that it was expected for the future that we should not Marry any Persons without License within any of those times: I thought it my Duty to consult *Lyndwood*, that so I might be satisfied how far my Canonical Obedience would oblige me to comply with this Order. For as I think my self bound to obey my Ordinary, where what he enjoyns is required by any Canon received in this Church: so where he shall command any thing not warranted by such a Canon, I do not think my self obliged to yield Obedience. And now, because you, and all the Clergy of the Diocese are equally concerned with my self in the Matter of this Charge given to us at the Visitation, I suppose you may take it kindly if I send you the Result of my Enquiries on this Subject: Especially since you, and others of

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my Brethren thought convenient to ask my Opinion in this Point when this Injunction was given us.

Lyndwood was Official of the Arches, (and afterwards Bishop of St. Davids, who Collected all the Provincial Constitutions made in England from the time of Stephen Langton, Archbishop of Canterbury, who held a Synod at Oxford, A. D. 1222. to the time of Henry Chicheley, Archbishop of Canterbury, whose Constitutions were Published, A. D. 1415. And wrote a Commentary upon them. All which Canons and Constitutions, as far as they are not contrary to the Laws of the Land and Prerogative Royal, are still in Force by Vertue of an Act of Parliament 25. H. 8. cap. 19. in fin. And therefore it is a Book which is necessary enough for every Clergy-man to have, if the Smallness of our Livings and Scarcity of the Book did not make the Price of it too much for our poor Purses.

In this Book, under the Title *De Decimis & Oblationibus*, there is a Constitution of Simon Mepham, Archbishop of Canterbury, made in the Year 1328. which begins thus; *Quia quidam Maledictionis filij in Nubentium Solemnijs, Purificationibus mulierum, mortuorum exequijs, & alijs in quibus Dominus in Ministrorum suorum Personis solebat oblationum libamine populariter honorari ad unius denarij vel alterius modicæ quantitatis oblationem, populi devotionem restringere sunt moliti, &c.* In this Place, upon the Words *Nubentium Solemnijs*, Lyndwood makes the following Comment. *Nubentium Solemnijs, de quibus patet ex de Ferijs. C. Capellanus. Hæc enim Solemnia cessant certis temporibus, viz. A prima Dominica Adventus Domini usq; ad Octavam Epiphaniæ inclusivè. Et a Septuagesima usq; ad octavam Paschæ inclusivè. Et a prima die Rogationum usq; post Septem Dies Pentecosten elapsos. Unde in Dominica Festi Trinitatis licite possint hujusmodi Nuptiæ celebrari sive solemnizari ut patet in d. c. Capellanus ad fin. & sic sentit ibi Anthonius de Butrio dum dicit Alij incipiunt in Dominica in Albis, non Dominica post Pentecosten. Et hi videntur Canonem violare.*

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The Canon which *Lyndwood* refers to is a Canonical Epistle of *Clement III.* who was Bishop of *Rome* from the Year 1187. to the Year 1191. It is put into the Body of the Canon Law among the Decretals Published by the Authority of Pope *Gregory IX.* *Tit. ix. de Ferijs. Cap. 4.* *Capellanus tuus, Frater Episcopo, coram nobis ex parte tua proposuit, quod cum Statuta Canonica declarent Nuptias tribus Septimanis ante Festum Nativitatis Beati Johannis Baptistæ minime celebrari debere, quidam Hebdomadas illas absq; interpolatione continuandas intelligunt. Alij vero inter Festum & ipsos volentes facere intervallum, illud dicunt ob reverentiam Festivitatibus Pentecostes fuisse Statutum : Quæ in Septimanis istis solet intervenire quandoq; : Et sic a tribus diebus Rogationum ante Ascensionem Domini inchoantes, usq; ad Octavum Diem post Pentecosten, illis hebdomadis computatis, illo tantum Spatio temporis celebrari Nuptias non permittunt, earum celebrationem abinde nullatenus inhibentes. Quia vero consulti fuimus, utra istarum Opinionum potior videatur, nobis & fratribus nostris apparuit, quod licet ea sit Romanæ Ecclesiæ consuetudo, ut quocunq; tempore Matrimonium contrahatur, consensu interveniente legitimo de Præsenti : Quia tamen a Septuagesima usq; ad septimum diem post Pentecosten celebrari Nuptiæ non sinuntur, & postea etiam tribus Septimanis vel pluribus ante Festivitatem Sancti Johannis sine differentia celebrantur : Posterior sententia meliori & subtiliori nititur ratione : et sive secundum Canones a Septuagesima usq; post Octavas Paschæ : sive juxta consuetudinem Ecclesiæ Romanæ usq; post septimum diem Festi Pentecostes (quod caret Octavis) Nuptiæ suspendantur : In Dominica quæ sequitur & deinceps possunt licitè celebrari.*

The Glossary upon this Canonical Determination of Pope *Clement* refers us to three other Canons, which I will here subjoyn.

Concil. *Laodicen.* Can. lii. *Quod non oportet in Quadragesima Nuptias, vel Natalitia celebrare.*

Concil. Trident. Sess. xxiv. De Sacramento Matrimonij Anathema xi. *Si quis dixerit, Prohibitionem Solennitatis Nuptiarum certis Anni temporibus Superstitionem esse, Anathema sit.*

Ibid. Inter Decreta de Reformatione Matrimonij Cap. x. *Antiquas Solennium Nuptiarum Prohibitiones ab Adventu Domini usq; in Diem Epiphaniæ, & a feriâ quartâ cinerum usq; in Octavam Paschatis observandas, Synodum Præcipere Alijs temporibus Nuptias permittere.*

This is all I am at present able to find upon this Subject, and I do not think from any thing contained in these Canons that we are hereby obliged to defer the Marriage of such as have been thrice Asked according to Law, till the time is expired wherein it is pretended that Marriage is Prohibited. And my Reasons are these.

I. It does not appear that there is any Provincial Constitution of this Realm whereby we are prohibited to Marry at whatsoever time we think convenient. For it is manifest that this Canon, on which *Lyndwood* makes the fore-recited Commentary, has no manner of Relation to the time wherein Marriages may be Solemnized; the Design of it being only to oblige all Persons to pay the accustomed Fees for Marriages, Churchings and Burials.

II. In the next Place, as to *Lyndwood's* Comment, tho' he was an Ecclesiastical Judge and an excellent Canonist, yet his bare Comment cannot make a Canon: Which makes it necessary for us to examine the Authority on which he builds his Assertion, and that being no more than a Decretal Epistle of the Pope, cannot, as I conceive, oblige us by Vertue of the 25. H. 8. Cap. 19. §. ult. which only confirms the old Canons and Constitutions received here before that Act, and neither contrary to the Laws of the Land or the Prerogative Royal. If it be said that *Lyndwood's* Commentary is a Proof that the Canon of Pope *Clement* was here received, I answer that I do not think that sufficient, because *Lyndwood's* Comment is not exactly

exactly agreeable to the Decree of the Pope. For *Lyndwood* allows Marriages may be Solemnized between the *Octaves of Easter*, now commonly called *Low Sunday* and *Rogation Sunday*, whereas *Clement* says the *Roman* Custom continued the Prohibition from *Septuagesima* to the Seventh Day after *Whitsunday*: And that the Canons only prohibited Marriage from *Septuagesima* to the *Octaves of Easter*; and besides says nothing of the Prohibition from *Advent* to the *Octaves of Epiphany*, which *Lyndwood* puts into his Comment. So that if the Custom of *Rome*, according to *Clement's* Decretal Epistle, was received here, then Marriage is prohibited from *Septuagesima* to the Day before *Trinity Sunday* inclusive: If the Canons which *Clemens* refers to were received here, then there is a Liberty left for Marriage to be Solemnized any time after *Low Sunday*: But in neither Case is any Prohibition of Marriage from *Advent* to the *Octaves of Epiphany*. Besides this Decretal of the Pope was not intended to settle the particular times wherein Marriage is forbidden, but only to satisfy a certain Bishop that it was not prohibited, either by the Custom of *Rome* or by any Canon, to be Solemnized upon *Trinity Sunday* or afterwards: And therefore neither makes for or against our present Purpose, but only shews that in the Church of *Rome*, and in some other Churches the Solemnization of Marriage was not used during certain times, but that different Churches had different Canons and Customs about this Matter. And that the Church of *Rome* made an Alteration of the Prohibited Times long before the Reformation, is evident from the Decree of the Council of *Trent* above cited, where the old Prohibitions there confirmed, are said to have been from *Advent* to the Day of the *Epiphany*, which cuts off seven or eight Days of the Term assigned by *Lyndwood*; and from *Ash Wednesday* to the *Octaves of Easter*, which is seventeen Days short of the Term set by *Lyndwood* and Pope *Clement*. Then there being no further Prohibition

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from that time to *Advent*, there are seven Weeks cut off from the time assigned by Pope *Clement*, and three Weeks from that assigned by *Lyndwood*. Now tho' the Authority of the Council of *Trent* be nothing with us, yet their Testimony in such a Case as this may be allowed, for they were not such Fools as to call those things ancient Customs which every body could remember the Original of. Wherefore when they call these times set down in their Canon *Ancient Prohibitions*, we may safely conclude they were the only times then known wherein Marriage was forbidden to be Solemnized, and consequently the times assigned by *Lyndwood* did not continue to the Reformation. The times therefore when Marriage is forbidden to be Solemnized being so uncertain, I see not why we should forbear to Marry Persons when we think convenient, after the Banns have been thrice Published, till such time at least as our Ordinary has satisfied us particularly what are the prohibited times, without sending us to *Lyndwood*, whose Authority in this Case is so uncertain. For, as I have shewed, *Lyndwood* sends us to *Clement's* Epistle, which determines nothing positively in the Matter. And the Gloss upon the Decretal sends us to the Council of *Trent*, which is of no Authority to us, and could be of none to Pope *Clement*, who lived 400 Years before it, and also cites the prohibited times different from what are there confirmed, as the ancient Custom of the *Roman Church*. The Council of *Laodicea*, to which the Gloss also sends us, was before Pope *Clement* some Ages, but there Marriage is forbidden only in *Lent*, which is no more agreeable to the Pope's Epistle than *Lyndwood* or the Council of *Trent*. So that upon the Whole Matter we may conclude, that there being no prohibited time determined by unquestionable Authority, we are at Liberty to act in this Matter as we please.

However it is further urged that if there be no Canon, yet there is an undoubted Custom in this Case, which in this
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Realm is equivalent to Law. But I believe that will be very difficult to be proved. For if all the Registers of *England* were to be searched, I question if one will be found, for these last Forty Years, to go no higher, wherein several Persons have not been Married by Banns within the times mentioned by *Lyndwood* as prohibited, and yet no Censure or Reproof has passed upon the Minister for Marrying at those times. Nay I question if they can prove from the Registers of any Ecclesiastical Court that any Clergy-man has been there censured for so doing. For I cannot but think if any such thing had been, we should have had the Case transmitted to us by *Godolphin* in his *Repertorium Canonicum*. At least that some body at the Visitation would have acquainted us with the Case, that so we might have been deterred from offending against the Order there given by such an Example. So that as yet I see no Reason to perswade my self that there is any such Custom.

III. The Spiritual Courts will find no Fault with us if we Marry Persons at any time of the Year, tho' it should be *Asb Wednesday* or *Good Friday*, provided they bring us a License: And yet there is not one Word in any License I have seen (which all run in the same Form) intimating a Dispensation either with the Canon or Custom for Prohibiting Marriage at certain times. From whence I think it reasonable to conclude that they know of no such Canon or Custom; or else that we have no more Authority to Marry such as bring a License, during the times pretended to be prohibited, than we have those that are Asked. Wherefore if we may Marry those that bring a License whensoever they come to us, I see not why we may not do the same by those who have had the Banns three times published.

IV. I conceive that our Laws since the Reformation take no Notice of any times wherein Marriage is forbidden to be Solemnized without License, because I cannot find any kind of Intimation

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timation of any such Matter in any of our Canons or Injunctions, or Articles of Visitation since that time.

Thus I have given you my Opinion upon this Point ; and if I am mistaken in any thing, shall be very thankful to him that will inform me better. However, that I may set no Man an Example of Disobedience, I purpose to obey the Order 'till the next Visitation, hoping in that time I may either learn wherein I am here mistaken, or else meet with something more to confirm my present Judgment. *I am,*

S I R,

Your Affectionate Brother,

And Humble Servant.

F I N I S.



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